

ISSUE DATE: January 29, 1999

DOCKET NO. P-5139/TC-98-874

ORDER APPROVING TARIFF FOR ITS VARIABLE PREPAID CALLING SERVICES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayner
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Introduction of Several
Pricing Options by GTE Communications
Corporation

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PROCEDURAL HISTORY

On August 17, 1998, GTE Communications Corporation (GTE-CC or the Company) filed a proposal to introduce six new services: 1) Packaged Unit Based Promotional Prepaid Calling Service; 2) Pecuniary Prepaid Calling Service; 3) Variable Prepaid Calling Service; 4) Affinity Calling Card Program No. 3; 5) Affinity Calling Card Program No. 4; and 6) Affinity Calling Card Program No. 5.

On November 23, 1998, the Minnesota Department of Public Service (the Department) filed comments recommending that the Commission 1) approve all the proposed pricing options except for Variable Prepaid Calling Service, 2) disapprove the rate structure for the Variable Prepaid Calling Service except for the rate of \$.19 per minute, and 3) direct the Company to eliminate the following pricing options: Promotional Calling Service and Premium Promotional Prepaid Calling Service.

The Commission met on January 19, 1999 to consider this matter.

FINDINGS AND CONCLUSIONS

I. GTE-CC's PROMOTIONAL PREPAID CALLING SERVICES

A. GTE-CC's Current Promotional Prepaid Calling Services and Proposed Third Alternative

Prior to its June 15, 1998 filing, GTE-CC listed two promotional prepaid calling services in its tariff: Basic Promotional Prepaid Calling Service and Premium Promotional Prepaid Calling Service. In its June 15, 1998 filing, the Company proposed an additional promotional prepaid calling service: Packaged Unit Based Promotional Prepaid Calling Service. Endusers of the Packaged Unit Based Promotional Prepaid Calling Service pay a lower per minute rate than endusers of the two previously tariffed services.

In response to an Information Request from the Department, GTE-CC explained that it established the Packaged Unit Based Promotional Prepaid Calling Service to lower its federal tax burden since

its tax is based on the tariff rate.

In untimely filed written comments and in oral argument at the hearing, GTE-CC clarified that its promotional prepaid cards were sold to business customers who in turn sent them at no charge to their customers as a sign of appreciation for their business. Further, GTE-CC argued for the first time that upon further review it now believed that none of these offerings needed to be tariffed at the state level in the first place. GTE-CC proposed, therefore, to withdraw these offerings from its tariff.

B. The Department's Comments

The Department recommended that the Commission direct GTE-CC to discontinue offering the two originally tariffed services because, the Department asserted, the only way GTE-CC could sign up customers for these higher priced services is by violating the requirements of Minn. Stat. § 237.74, subds. 1 and 2.

The Department did not receive the Company's untimely written comments until the morning of the hearing and stated that it was not prepared at this time to address the Company's newly raised position that the promotional prepaid services in question were not required to be tariffed.

C. Commission Analysis and Action

In these circumstances, the Commission will accept **[alternative language: “acknowledges without approval or disapproval”]** the Company's proposal to withdraw these three tariffed offerings with the clarification that it takes no position at this time on the question whether it is lawful for GTE-CC to continue offering these services on an untariffed basis. The Department is free, therefore, to challenge GTE-CC's offering these services on an untariffed basis in a complaint to the Commission and the Commission would consider the issue de novo at that time.

II. VARIABLE PREPAID CALLING SERVICES

A. GTE-CC's Variable Pricing Proposal

GTE-CC's Variable Prepaid Calling Service (VPCS) allows end users to originate outbound, direct dial long distance calls via a toll free access number using a prepaid calling card dispensed to the enduser via vending machines at businesses (distributors) such as mini-marts and gas stations. The distributor, as the agent for GTE-CC, receives a commission based on purchases for placing the machine in its premise.

The cards are sold in 15 minute increments, with the highest rate for the 15 minute card, decreasing to the lowest rate for the 90 minute card. The distributor also determines from among the tariffed options the per minute rate which the cards sold on its premises will provide. The distributor makes this choice with an eye to maximizing its commission (or other business considerations) based on its understanding of its clientele's purchasing preferences, e.g. whether they will pay a premium for convenience or will go out of their way to get a lower price. The decision to purchase a specific card at the offered rate, however, is made by the enduser, who decides whether to purchase the GTE-CC card at the posted rate. The enduser has several options; for example, the enduser can 1) purchase the card offered by the particular distributor, 2) seek a

better rate on such a card at the premises of a different distributor, 3) use a postpaid calling card, 4) use a third party billed option, or 5) use a coin payphone.

GTE-CC emphasized that the time and rate options are identical at all the distribution locations of each distributor throughout Minnesota and the United States so there is no discrimination, geographic or otherwise, between customers of that distributor.

B. The Department's Comments

The Department recommended that the Commission disapprove the variable rate structure for the VPCS and require that the Company offer the service at the lowest rate listed in the tariff, \$.19 per minute, alleging several statutory violations:

First: the Department asserted that the tariff violated the anti-discrimination provisions of Minn. Stat. § 237.74, subd. 2 since any prospective customer who is aware of the full range of prices for the VPCS would choose to receive the rate of \$.19 per minute rather than the rates of \$.20 through \$.40 per minute.

Second: the Department asserted that the proposed rate structure violated the prohibition against geographic deaveraging in violation of Minn. Stat. § 237.74, subd. 2.

Third: the Department stated that the VPCS may violate the statutory restriction limiting an interexchange carrier from "unreasonably limiting] its service offerings to particular geographic areas" in violation of Minn. Stat. § 237.74, subd. 2.

C. Commission Analysis and Action

The Commission will approve GTE-CC's VPCS as tariffed.

- The Department's suggestion that GTE-CC's tariff unreasonably limits the service offerings to particular geographic areas" in violation of Minn. Stat. § 237.74, subd. 2 is not accepted. There is no geographic limitation stated in the tariff. The Company intends to offer the service throughout Minnesota.
- The proposed rate structure does not violate the prohibition against geographic deaveraging. Rates do not differ depending on the geographic location of the vending machine from which GTE-CC's prepaid calling cards are issued. The rates selected by the distributor will be identical at all of the distributor's locations throughout Minnesota. Neither do rates differ depending on where calls originate or terminate. Rates for all routes of the same length are identical, as required by statute.
- The tariff does not provide for unreasonably discriminatory rates. First, since the rates selected by the distributor will be identical at all of the distributor's locations throughout Minnesota, there is no price discrimination among a distributor's customers. Second, as between customers who purchase cards at different rates because they purchase them from different distributors, the Commission finds that to the extent that this is discrimination, it is not *unreasonable* discrimination as prohibited by Minn. Stat. § 237.74, subd. 2 in light of the multiple reasonable alternative services, alternative service providers, and alternative distributor sites readily available to customers.

No prejudice to these customers occurs because it is reasonable to assume that customers know that prices offered at certain stores (e.g. convenience or upscale stores) are likely to be higher than the prices offered at others, e.g. discount stores, just as they know, for example, that the same gallon of milk sold at a convenience or upscale store is likely to be priced higher than when it is sold at a discount store. Second, given the clear per minute pricing information available for customer inspection on the packaging of GTE-CC's prepaid calling cards, it is reasonable to conclude that customers can very quickly gain specific knowledge where the GTE-CC cards are offered at lower prices so that they can go there to purchase them if that is their preference. This ability of the enduser to comparison shop is an important hallmark of a competitive market.

Finally, the Commission believes that the variable pricing authorized by this tariff may be viewed as "special pricing" that is allowable under Subdivision 3 of Minn. Stat. § 237.74. Subdivision 3 states in relevant part:

Individual pricing for services may be allowed when a uniform price should not be required because of market conditions.

In the circumstances shown in this case, the Commission finds that, to the extent that its VPCS tariff represents "individual pricing" or non-uniform prices within the meaning of Minn. Stat. 237.74, subd. 3, this pricing approach for VPCS is justified by market conditions; i.e. the variable pricing aspect of the VPCS tariff is authorized by the "special pricing" exception to the uniform price requirement created by Subdivision 3 based on market conditions. In reaching this conclusion, the Commission need not determine that VPCS services are subject to effective competition pursuant to Minn. Stat. § 237.59 and has not done so. Market conditions which justify GTE-CC's offering of its VPCS services at various rates (at any level selected by a distributor from \$.19 to \$.40) pursuant to Minn. Stat. § 237.74, Subd. 3 are:

1. The variable pricing feature of the tariffed service appears to respond to a definite and legitimate customer (distributor) desire to have the opportunity to choose the per minute rate it will display for purchase in their premises, based on the distributors' profitability goals and knowledge of their clientele, thereby affecting the distributors' potential profit (commission) margin.
2. At the same time, enduser customers are not prejudiced because 1) they have reasonable alternatives to prepaid calling card services; 2) they have knowledge of and reasonable access to alternative providers of prepaid calling card service; and 3) alternative distributor sites for GTE-CC's prepaid calling card are reasonably known and available; and 4) there is prominent and clear price information on the card which allows the prospective customer, if the customer wishes to do so, to compare the offer with those offered by other distributors.

ORDER

1. GTE-CC's withdrawal of three prepaid promotional card tariffs is accepted, as clarified in the text of this Order.
2. GTE-CC's tariff for its Variable Prepaid Calling Services is approved.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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